

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 22 2015

OFFICE OF  
MANAGING DIRECTOR

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Licensee/Applicants: **Delta Radio, LLC**  
Petition for Reconsideration of Dismissal of Waiver  
and Deferral of Payment Request: Financial  
Hardship  
Disposition: **Dismissed and Denied** (47 U.S.C. §§  
159(c)(2), 405(a), 47 C.F.R. §§ 1.1164, 1.1167, and  
1.1910)  
Stations: WKXY (FM), WROX (AM), W274AW,  
W289AP, WPOT213, and WPOT216,  
FRN: 0011343829  
Fees: Fiscal Year (FY) 2011, FY 2012, and FY  
2013 Regulatory Fees  
Date of Decision: Apr. 10, 2014  
Date Petition Filed: May 12, 2014  
Date Regulatory Fees Paid: Not Paid  
Fee Control No.: RROG-14-00015604

Dear Counsel:

This responds to Licensee's Petition for Reconsideration<sup>1</sup> (*Petition*) of the Commission's April 10, 2014, letter dismissing Licensee's September 20, 2013, *Request*<sup>2</sup> to waive the annual regulatory fees for Fiscal Year (FY) 2011, FY 2012, and FY 2013. As we discuss below, under 47 U.S.C. §§ 159(c)(2) and 405(a), and 47 C.F.R. §§ 1.106 (p), 1.1164(e), 1.1167(b), and 1.1910,<sup>3</sup> we dismiss the *Petition* because Licensee is delinquent in paying the FY 2011, FY

<sup>1</sup> Delta Radio, LLC, Licensee of WKXY (FM), W274AW, et al., Former licensee of WROX, W289AP et al., For Waiver of regulatory fees for FY 2011 through FY 2013, Petition for Reconsideration (May 12, 2014) (*Petition*).

<sup>2</sup> Letter from Nathaniel J. Hardy, Esq., Wood, Martin & Hardy, P.C., Attorneys at Law, 3300 Fairfax Dr., Suite 202., VA 22201 to Marlene H. Dortch, Secretary, FCC, 445 12<sup>th</sup> St., S.W., Attn: Office of Managing Director, Washington, DC 20554 (Sep. 20, 2013) (*Request*).

<sup>3</sup> 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 U.S.C. § 405(a) ("No such application [petition for review] shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without special order of the Commission."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 47 C.F.R. § 1.1167(b)(2) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty. ... If the fee

2012, and FY 2013 regulatory fees. Furthermore, we deny the Petition because, contrary to Licensee's assertions, 47 C.F.R. § 1.1164(e) is not limited to Wireless Bureau applications and 47 C.F.R. § 1.1910(a)(2) is not inconsistent with the fee waiver provision at 47 U.S.C. § 159(d). Moreover, because the Secretary of State of Nevada revoked Licensee's status as a limited liability company, Licensee lacks standing to file an application. Specifically, public records of the Nevada Secretary of State show the Secretary revoked the business registrations for both Delta Radio LLC and Delta Radio Network LLC.<sup>4</sup> Under Nevada state law, if the charter of a limited liability company is revoked, the right to conduct business is forfeited,<sup>5</sup> and the persons who assume to act as a limited-liability company without authority to do so are jointly and severally liable for all debts and liabilities of the company.<sup>6</sup> Unless Licensee has relevant satisfactory evidence showing the Nevada records are in error, under the state law, Licensee lacks status to pursue the *Petition* and the partners are jointly and severally liable for the fees, and each is a delinquent debtor.

### *Background*

Our records show that Licensee is delinquent<sup>7</sup> in paying the required FY 2011, FY 2012, and FY 2013 regulatory fees and accrued charges, which include interest, penalties, and charges of collection as set forth in 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Specifically, Licensee did not pay the FY 2011<sup>8</sup> and FY 2012<sup>9</sup> regulatory fees for stations with call signs WKXY(FM), WROX (AM),<sup>10</sup> W274AW, W289AP, WPOT213, and WPOT216 when due, and it did not file proper timely requests to defer payment of those fees. Nonetheless, on September 20, 2013, Licensee submitted its *Request* for waiver and deferment of the delinquent fees from the earlier years and the FY 2013 regulatory fees. On April 10, 2014, we dismissed the *Request*.

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payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed."); see Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5346, ¶ 35 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) ("The filing of a petition for reconsideration will not toll th[e] 30-day period.").

<sup>4</sup> <https://www.nvsilverflume.gov/businessSearch>.

<sup>5</sup> 7 NV ST 86.274.

<sup>6</sup> 7 NV ST 86.361.

<sup>7</sup> 47 C.F.R. § 1.1901(i).

<sup>8</sup> Licensee was required to submit a proper complete petition to defer payment or to make full payment of the FY 2011 annual regulatory fees no later than September 16, 2011. FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time (ET), *Public Notice*, DA 11-1420 (Aug. 17, 2011), FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM, ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

<sup>9</sup> Licensee was required to submit a proper complete petition to defer payment or to make full payment of the FY 2012 annual regulatory fees no later than September 13, 2012. FY 2012 Regulatory Fees De No Later Than September 13, 2012, Eastern Time (ET), *Public Notice*, DA 12-1295 (Aug. 13, 2012).

<sup>10</sup> In its *Request*, Licensee asserted that on January 30, 2012, it assigned station WROX (AM) and FM translator, W289AP, LL James Media, LLC, thus that portion of the *Request* seeking a waiver of the FY 2013 regulatory fees did not apply to those two stations; however, the delinquent debts arising from Licensee's failure to pay the prior year's obligations remain.



Our decision (*Dismissal Letter*<sup>11</sup>) explained that Licensee was delinquent in paying the FY 2011 and FY 2012 regulatory fees and the assessed charges; accordingly, under 47 C.F.R. §§ 1.1164(e)<sup>12</sup> and 1.1910,<sup>13</sup> we dismissed and demanded immediate payment. Our letter also (a) demanded immediate payment; (b) explained we dismissed the *Request* because Licensee was delinquent in paying the FY 2011 and FY 2012 regulatory fees; (c) admonished Licensee that charges, including interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, continue to accrue; (d) admonished Licensee that under 47 C.F.R. § 1.1910(a)(2) & (3), “[a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination [and that] the application ... will be dismissed”; (e) summarized for Licensee the procedures to transfer to Treasury delinquent debt, including offset and notification to credit reporting information bureaus; and (f) warned Licensee that it remains subject to red light sanctions.

Despite the Managing Director’s demand for immediate payment and his admonishments about consequences for failing to pay the debt, Licensee failed to comply with those orders, rather on May 12, 2014, Licensee submitted a *Petition* “request[ing] reconsideration of the dismissal ... dated April 10, 2014 ... of the request for waiver of the annual regulatory fees for [Licensee’s four stations] for federal Fiscal Years 2011, 2012 and 2013.”<sup>14</sup> Licensee asserts “OMD is evidently taking the position that in order for the Commission to consider [Licensee’s] request for a waiver so as to be *excused* from paying the subject fees, [Licensee is] required to pay the subject fees.”<sup>15</sup> Licensee adds, the Managing Director’s reliance on 47 C.F.R. § 1.1164(e) “is misplaced [because the] rule subsection must be read in the context of ... Section 1164(d) [sic]. That subsection, by its plain terms, only applies ‘[w]here a regulatee’s new, renewal or reinstatement application is required to be filed with a regulatory fee ... the application will be dismissed if the regulatory fee is not included with the application package.’ ... Thus, the ‘application’ referred to in Subsection (e) is obviously an application of the sort handled by the Wireless Bureau, not a request by a broadcast licensee for a fee waiver directed at the OMD. Indeed, OMD’s own practice and procedure over well more than a decade reflects its understanding that it could act on waiver requests without advance payment of the subject fees.”<sup>16</sup>

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<sup>11</sup> Letter from Mark Stephens, CFO, FCC to Nathaniel J. Hardy, Esq., Wood, Martin & Hardy, P.C., 3300 Fairfax Dr., Suite 202, Arlington, VA 22201-4400 (Apr. 10, 2014) (*Dismissal Letter*).

<sup>12</sup> 47 C.F.R. § 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.”).

<sup>13</sup> 47 C.F.R. § 1.1910(a)(2) & (3) (“Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.”).

<sup>14</sup> *Petition* at 1.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.* at 3.

Licensee also asserts that the Managing Director incorrectly interprets 47 C.F.R. § 1.1910(a)(2) as "requiring that a fee be paid before the FCC has made any determination whether the licensee is unable to pay the fee due to financial hardship, and indeed requiring payment as a condition of consideration of the licensee's showing of financial hardship."<sup>17</sup> Licensee insists that an approach requiring payment before consideration of the showing of financial hardship "cannot be squared with the intent of Congress in adopting a program of regulatory fees that was expressly tempered with the provision for waivers where payment of the fees would impose financial hardship on the broadcast licensees."<sup>18</sup>

### *Standards*

#### Fee Waiver

In establishing the regulatory fee program mandated by Congress,<sup>19</sup> the Commission set out the relevant schedules of the annual fees and the established the procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and, penalties.<sup>20</sup>

Specific to payment and penalties, "[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164,"<sup>21</sup> which provides in relevant part, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... not paid in a timely manner,"<sup>22</sup> "[i]f a regulatory fee is not paid in a timely manner, the regulatee will be ... assess[ed] a 25 percent penalty [and] the delinquent payor's pending applications [will be subject] to dismissal,"<sup>23</sup> and "[a]ny pending or subsequently filed application ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee."<sup>24</sup> Furthermore, 47 U.S.C. § 159(c) provides unambiguous enforcement sanctions, *i.e.*, automatic assessment of a 25 percent penalty, a mandate that the Commission "may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section," and direction that "[i]n addition to or in lieu of the penalties and dismissals ... the Commission may revoke any instrument of authorization held by an entity that has failed to make payment of a regulatory fee ...."<sup>25</sup>

As to the waiver provision at 47 U.S.C. § 159(d), the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of good cause and

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See 47 C.F.R. § 1.1151.

<sup>20</sup> See 47 C.F.R. Part 1, Subpart G.

<sup>21</sup> 47 C.F.R. § 1.1157(c)(1).

<sup>22</sup> 47 C.F.R. § 1.1164.

<sup>23</sup> 47 C.F.R. § 1.1164(c).

<sup>24</sup> 47 C.F.R. § 1.1164(e).

<sup>25</sup> 47 U.S.C. § 159(c).



a finding that the public interest will be served thereby.<sup>26</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>27</sup> In an appropriate situation, we may grant fee relief based on a "sufficient showing of financial hardship."<sup>28</sup> In such matters, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>29</sup> Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, e.g., a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>30</sup>

As set forth in 47 C.F.R. § 1.65, "[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall promptly as possible and in any event within 30 days ... amend the application ... so as to furnish such additional or corrected information ... ."

"The term, application, includes in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority."<sup>31</sup> As part of our established procedures, "[a]n application (including a petition for reconsideration or any application for review of a fee determination) ... will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (*see, e.g.*, 31 CFR 285.13; 47 CFR part 1, subpart P)."<sup>32</sup> Furthermore, "[a]pplications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G."<sup>33</sup> Additionally, "[a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (*see* § 1.1901(i))"<sup>34</sup> ... If a

<sup>26</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995).

<sup>27</sup> *Id.*

<sup>28</sup> Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (FY 1994 MO&O).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> 47 C.F.R. § 1.1901(d).

<sup>32</sup> 47 C.F.R. § 1.1910(a)(1).

<sup>33</sup> 47 C.F.R. § 1.1910(b)(1).

<sup>34</sup> 47 C.F.R. § 1.1910(b)(2).



delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.”<sup>35</sup> Consistent with 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910, when an applicant for relief is delinquent in paying the regulatory fee, the Commission will dismiss<sup>36</sup> the request for relief and impose the statutory penalty.<sup>37</sup>

### Petition for Reconsideration

Under 47 C.F.R. § 1.106(d) a petition for reconsideration must “state with particularity the respects in which petitioner believes the action taken by ... the designated authority should be changed,”<sup>38</sup> and the petition must identify a material error, omission or reason warranting reconsideration.<sup>39</sup>

The filing of a petition for reconsideration does not “excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without special order of the Commission”<sup>40</sup> and it “will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver, reduction or deferment.”<sup>41</sup>

<sup>35</sup> 47 C.F.R. § 1.1910(b)(3).

<sup>36</sup> 47 U.S.C. § 159(c)(2) (“The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.”); 47 C.F.R. §§ 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.”); 1.1166(c) (“Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”).

<sup>37</sup> 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).

<sup>38</sup> 47 C.F.R. § 1.106(d)(1).

<sup>39</sup> 47 C.F.R. § 1.106(d)(2).

<sup>40</sup> 47 U.S.C. § 405(a).

<sup>41</sup> 47 C.F.R. § 1.1167(b)(2) (“The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver, reduction or deferment. ... If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.”); *see* 9 FCC Rcd at 5346, ¶ 35, *supra* (“The filing of a petition for reconsideration will not toll this 30-day period.”). *See* 47 C.F.R. § 1.1164 (e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.”).



## Discussion

In summary, Licensee asserts we should reconsider and reverse the Managing Director's decision dismissing the *Request* on two grounds, *i.e.*, the Managing Director erred first, by relying on 47 C.F.R. § 1.1164(e) as grounds to dismiss the application, and second by incorrectly interpreting 47 C.F.R. § 1.1910(a)(2), to require payment of the fee before considering whether to consider Licensee's claimed financial hardship. Before turning to the reasons why Licensee is wrong in its assertions, we dismiss the *Petition* because Licensee willfully failed to pay delinquent debts and to comply with the orders in the *Dismissal Letter*.

Licensee has not complied with our demand for payment of the FY 2011 and FY 2012 delinquent fees and accrued charges or the FY 2013 regulatory fees and accrued charges. As set forth at 47 U.S.C. § 405(a) and 47 C.F.R. § 1.1167(b)(2), Licensee's *Petition* does not relieve it "from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment."<sup>42</sup> Hence, we dismiss the *Petition* and need not address Licensee's opinion as to meaning and intent of sections 1.1164(e) and 1.1910. Moreover, as noted above, the public records of the Nevada Secretary of State show the Secretary revoked Licensee's status as a limited liability company, thus under 7 NV ST 86.274 and 86.361, Licensee's right to conduct business is forfeited and the persons acting as a limited-liability company without authority to do so are jointly and severally liable for all debts and liabilities of the company. Furthermore, because Licensee failed to notify us of the revocation, it appears Licensee willfully failed to comply with 47 C.F.R. § 1.65. Nonetheless, as a courtesy, we will explain that Licensee has misstated the Commission's procedures by asserting it was required to pay the fee before the Commission will consider a petition to defer payment and a separate request for a waiver. In summary, the Commission's rules call upon us to review as an initial matter whether the submission is timely and properly filed, and that the applicant is not a delinquent debtor.

Licensee first asserts, "OMD is evidently taking the position that in order for the Commission to consider [Licensee's] request for a waiver so as to be *excused* from paying the subject fees, [Licensee is] required to *pay* the subject fees,"<sup>43</sup> and that 47 C.F.R. § 1.1164(e) "must be read in the context of ... Section 1164(d) [sic] [so as to mean] the 'application' referred to in Subsection (e) is obviously an application of the sort handled by the Wireless Bureau, not a request by a broadcast licensee for a fee waiver directed at the OMD. Indeed OMD's own practice and procedure over well more than a decade reflects its understanding that it could act on waiver requests without advance payment of the subject fees."<sup>44</sup> Licensee fails to offer any legal authority to support its position.

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<sup>42</sup> 47 C.F.R. § 1.1167(b)(2); see 9 FCC Rcd at 5346, ¶ 35, *supra* ("The filing of a petition for reconsideration will not toll this 30-day period."); see also 47 C.F.R. § 1.1164 (e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.").

<sup>43</sup> *Petition* at 2.

<sup>44</sup> *Id.* at 3.



Next, Licensee asserts the Managing Director incorrectly interprets 47 C.F.R. §1.1910(a)(2) as “requiring that a fee be paid before the FCC has made any determination whether the licensee is unable to pay the fee due to financial hardship, and indeed requiring payment as a condition of consideration of the licensee’s showing of financial hardship.”<sup>45</sup> Licensee’s opinion is, this “cannot be squared with the intent of Congress in adopting a program of regulatory fees that was expressly tempered with the provision for waivers where payment of the fees would impose financial hardship on the broadcast licensees.”<sup>46</sup> Licensee fails to cite any pertinent authority supporting its claim.

Licensee’s unsupported assertions are misplaced. Licensee misstates the Commission’s procedures and then Licensee fails to demonstrate a resulting error in determining whether (a) the regulatee complied with procedures for filing a proper and complete application for relief, and (b) the regulatee is not otherwise subject to a bar.

For example, 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish the proper location and procedures for filing waiver requests and petitioning for deferral and the consequence of dismissal for failing to comply with those rules. Initially, the Commission determines whether the regulatee *filed* the application for relief by submitting it at the office designated to receive and process the particular matter.<sup>47</sup> If the submission is not filed, it is returned. Next, a request to waive a regulatory fee is reviewed to determine whether the regulatee complied with 47 C.F.R. § 1.1166(c), which requires either full payment of the fee (which will be refunded, if the waiver is granted) or a separate “petition to defer payment due to financial hardship, supported by documentation of the financial hardship.” Plainly, as set forth at 47 C.F.R. § 1.1166, a regulatee, who is not a delinquent debtor, may file a timely and complete petition to defer payment along with a petition for waiver and have the matter considered.<sup>48</sup> An incomplete application for relief will be dismissed.<sup>49</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> 47 C.F.R. §§ 0.401 (“The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing.”); 1.7 (“pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.”); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

<sup>48</sup> See *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).

<sup>49</sup> *Assessment and Collection of Regulatory Fees For Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) (“A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.”);



Next, the application<sup>50</sup> is examined to determine if the applicant “paid the ... appropriate regulatory fees [or] is delinquent in its debts owed the Commission,”<sup>51</sup> and if the applicant is “found not to have paid the [a] proper ... regulatory fee [the application] will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G,”<sup>52</sup> which provide for the assessment of the statutory 25 percent penalty and dismissal of the application. Furthermore, 47 C.F.R. §1.1910 provides “[a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (*see* §1.1901(i))”<sup>53</sup> and ultimately “the application or request for authorization will be dismissed.”<sup>54</sup> Here, Licensee was delinquent in paying the fees for FY 2011 and FY 2012, thus the application was dismissed, so it was unnecessary to address fully the other ground for dismissal, *i.e.*, Licensee’s failure to file a separate proper petition to defer payment of the FY 2013 regulatory fees.<sup>55</sup> The Managing Director approach to Licensee’s Request is entirely consistent with 47 U.S.C. §159(c) and our rules at 47 C.F.R. §§ 1.1164(e) and 1.1910(a)(2). The statute provides unambiguously that the Commission “may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under ... section [159],” and our rules establish the procedures to dismiss any application filed by delinquent debtor. Our rules are entirely consistent with this statutory mandate, and both show Licensee to be wrong.

<sup>50</sup> 47 C.F.R. § 1.1901(d) (Application is defined to include any request for assistance or relief by the Commission or on delegated authority ...).

<sup>51</sup> 47 C.F.R. § 1.1910(b)(1).

<sup>52</sup> 47 C.F.R. § 1.1910(b)(1). The rules at subpart G include 47 C.F.R. §§ 1.1157(c)(1) (“[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164”), 1.1164(c) (“If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor’s pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.”) and 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.”).

<sup>53</sup> 47 C.F.R. § 1.1910(b)(2).

<sup>54</sup> 47 C.F.R. § 1.1910(b)(3).

<sup>55</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166(c); Assessment and Collection of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) (“A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.”); *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).



Indeed, Licensee's challenge does not address this statutory mandate or the rules discussed above that provide for dismissal. Furthermore, Licensee does not either address the Commission's consistent interpretation of its rule<sup>56</sup> or furnish relevant legal authority to support its opinion. Moreover, Licensee does not dispute the relevant fact that it was delinquent in paying both the FY 2011 and FY 2012 regulatory fees, which provides the basis for dismissal of the *Request* then and the *Petition* now.

Although we provided notification in our *Dismissal Letter*, we refresh our notice that 31 U.S.C. § 3717(e) and 47 C.F.R. § 1.1940 require us to assess (a) collection charges, (b) interest at the Treasury rate when the debt is more than 30 days delinquent, and (c) a penalty of 6% after 90 days. These charges will continue until Licensee pays the debt in full or executes an approved written installment payment plan. Furthermore, under 31 U.S.C. § 3711(g), without further notice, we will transfer delinquent debt to Treasury, which will initiate collection action through private collection activities, and Treasury will assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Finally, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5 and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process.

Until Licensee makes full payment of the fees, late payment penalties,<sup>57</sup> and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940,<sup>58</sup> we will withhold action on and thereafter dismiss any pending application.<sup>59</sup>

<sup>56</sup> Assessment And Collection Of Regulatory Fees For Fiscal Year 2013, *Report and Order*, 28 FCC Rcd 12351, 12369-70, ¶ 54 (2013) ("Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules [footnote deleted] and in the Debt Collection Improvement Act of 1996 (DCIA). ... We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made [footnote deleted]."); Assessment And Collection Of Regulatory Fees For Fiscal Year 2012, *Notice of Proposed Rulemaking*, 27 FCC Rcd 5539, 5589, ¶ 82 (2012); Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9298, ¶ 55 (2010) ("We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made [footnote deleted]. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).").

<sup>57</sup> 47 U.S.C. § 159(c).

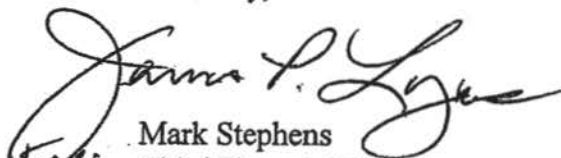
<sup>58</sup> 31 U.S.C. § 3717; 47 C.F.R. § 1.1940 ("the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717 ... These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.").

<sup>59</sup> 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").



If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

  
For: Mark Stephens  
Chief Financial Officer